IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6154 OF 1996.

1. Isibars Limited
a company incorporated and regd
under the Companies Act, 1956 with
its office at Indiasteel Complex,
Railway Gate No.4, Antop Hill,
Wadala (East) Mumbai 400 037.

2. Ashwin Gupta of Mumbai
Indian Inhabitant, being a shareholder
and director of Isibars Limited,
with his office at Indiasteel
Complex, Railway Gate No.4
Antop Hill, Wadala,
Mumbai - 400 037.

Versus

1. Khopoli Municipal Council
a statutory local authority under
the Maharashtra Municipalities
Act, 1956 with its office at
Khopoli, Dist. Raigad
2. The Chief Officer,
Khopoli Municipal Council,
Khopoli, District Raigad.

.. Respondents

..

Mr.C.U.Singh with Ms Savita Upadhyaya

for Petitioners

Mr.Suchir Tolat i/b L.C.Tolat & Co for

Respondent Nos. 1 and 2.

CORAM: A.P.SHAH AND

S.U.KAMDAR, JJ

DATE : 29TH SEPTEMBER, 2004

Oral Judgment (Per A.P.Shah, J)

1. Heard Advocates.

2. The petitioner no. 1 is a Company registered under the Companies Act, 1956 and petitioner no. 2 is a share holder and Managing Director of the petitioner no.1 company. Respondent no. 1 is the local authority established under the provisions of Maharashtra Municipalities Act, 1965. Respondent No.2 is the Chief Officer of the respondent no.1. By this petition under Article 226 of the Constitution of India the petitioners are seeking to quash and set aside the demand for octroi raised by the respondents on the element of customs duty under Export Promotion Capital Goods Scheme (EPCG) and to direct the respondents to refund to the petitioners a sum of Rs.2,19,307/- and Rs.44,640/- paid under Octroi Deposit Receipt (challan) No.12674 Octroi

Deposit Receipt (Challan) No. 12813 respectively.

3. The first petitioner Company is engaged in the business of manufacturing, processing, sale and export of steel products consisting mainly of bars, rods, rounds etc. In 1995, Government of India introduced revised Export Promotion Capital Goods Scheme vide Notification No.110/95 dated 5th June, 1975. In accordance with the Scheme, the petitioner was granted an import licence for importation of machinery worth Rs.36,13,94,863/-. Under this scheme, exporters were permitted to import capital machinery without payment of any custom duty or additional duty, provided they undertake to fulfil export obligation equivalent to six times the CIF value of the imported machinery on FOB basis or fourtimes the CIF value on net foreign exchange basis, within a period of eight years from the date of importation. The Import Licence dated 10th July 1996 was issued in accordance with the aforesaid Notification No.111/1995-Customs and the period for fulfilment of export obligation was specified as eight years.

4. The first two consignments of the petitioners were received in September, 1996. The respondent no.1 however, refused to allow entry of the said

machinery into the municipal limits unless the petitioners paid the Octroi duty not only on the value of the machinery but also on the Customs Duty which was saved under EPCG Scheme. As the machinery was detained by the respondent no. 1 the petitioners paid additional amount of octroi duty under protest. The petitioners contend that the impugned demand for payment of octroi on the element on Customs Duty which is fully exempted under the said EPCG Scheme is without jurisdiction, in excess of the powers and authority of the Municipal Council and therefore deserves to be quashed and set aside.

5. Mr. C.U.Singh, learned counsel appearing for the petitioners submitted that the Maharashtra Municipality Act, and Rule 17 of the Octroi Rules framed under the said Act only empower the respondents to levy octroi duty on the basis of the value of the goods and such expenses like Customs Duty, freight, clearing/forwarding charges and transport as have been incurred on the goods until thetime when the goods arrive at the Municipal Limits. The respondents are neither empowered by the Act nor any Rules to levy or demand octroi on Customs Duty which has been waived or exempted and as such Customs Duty has not been incurred on the goods at any time prior to their arrival at the

Municipal limits nor is such Customs Duty payable at all in respect of the concerned goods. Therefore, according to Mr. Singh, the respondents have no power or authority or jurisdiction to demand octroi in respect of Customs Duty which is wholly exempted under EPCG scheme. Learned counsel placed heavy reliance on the judgment of this Court in Ceat Tyres of India Ltd & Anr vs The Municipal Corporation of Greater Bombay & ors reported in 1994 (55) ECR 656 (Bombay). In that case the Division Bench of this court while constrying the expression " Value of Articles" under Article 2 (7) (e) of the Mumbai Municipal Corporation (Levy of Octroi) Rules 1965 held that it is not permissible for taxing authority to load value of an article by including custom duty because the custom duty was not payable at the time of charging the tax and it is not open for the custom authority to include custom duty in value of the article merely because at some future point of time the company may be liable to pay custom duty in case the company commits breach of the conditions of the advance licence.

6. In the light of the decision of the Division Bench action of the respondent no. 2 in recovering octroi duty on the customs duty which was saved under the EPCG scheme is clearly illegal and without

jurisdiction. We therefore, quash and set aside the impugned demand and direct the Municipal Council to refund to the petitioners the excess amount of octroi duty recovered on amount of Customs Duty within a period of eight weeks from today.

7. Before parting with this matter, we may mention that it will be open for the Municipal Council to secure an undertaking or a bond from the importer that in case at any date the customs duty or any other amount set out under Rule 17 become payable, then the importer would undertake to pay the additional octroi duty.

8. Rule is made absolute in terms of the order mentioned above.

(A.P.SHAH, J)

(S.U.KAMDAR, J)